



TOWN OF BROOKLINE

Massachusetts

BOARD OF APPEALS

DIANE R. GORDON, Co-Chair
HARRY MILLER, Co-Chair
BAILEY S. SILBERT

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PATRICK J. WARD, Secretary

TOWN OF BROOKLINE BOARD OF APPEALS CASE NO. 070005

Petitioner, M.H. Danesh Family LLP ("Danesh"), applied to the Building Commissioner for permission to construct an addition and to reconstruct and renovate a former gasoline service station and to convert the premises into a 31 seat restaurant per plans at 455 Harvard Street per plans. The request also included various site improvements including fences; walls; lighting; landscaping; extending, altering and reconfiguring the parking lot layout; and dumpster enclosures. The application was denied and an appeal was taken to this Board.

On January 25, 2007, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed February 15, 2007, at 7:30 p.m. in the Selectmen's Hearing room on the sixth floor of the Town Hall as the time and place of a hearing. Notice of the hearing was mailed to the Petitioner, to its attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published February 1, 2007 and February 8, 2007, in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: M.H. DANESH FAMILY LLP

Location of Premises: 455 HARVARD STREET BRKL

Date of Hearing: 02/15/2007

Time of Hearing: 7:30 p.m.

Place of Hearing: Selectmen's Hearing Room, 6th. Floor

A public hearing will be held for a variance and/or special permit from

1. 4.01.3.a; Permitted Uses; Special Permit Required.
2. 4.07; Table of Use Regulations; Use #30; Special Permit Required
3. 5.09.2.a; Design Review; Special Permit Required
4. 5.43; Exceptions to Yard and Setback Regulations; Special Permit Required
5. 5.70; Rear Yard Requirements; Variance Required;
6. 5.73.1; Rear Yards in Business or Industrial Districts; Variance Required
7. 8.02.2; Alteration or Extension; Special Permit Required

Of the Zoning By-Law to construct an addition and to reconstruct and renovate the former gasoline service station and to convert the premises into a 31 seat restaurant per plans

at 455 HARVARD STREET BRKL

Said Premise located in an L-1.0 district.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

**Diane R. Gordon
Harry Miller
Bailey Silbert**

Publish: February 1, 2007 and February 8, 2007.

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Board members Harry Miller, Bailey Silbert, and Jesse Geller. Petitioner was represented at the hearing by Attorney Jeffrey P. Allen of Seegel, Lipshutz & Wilchins, P.C.

At the hearing, Adam Serafin, Planner of the Planning Department distributed the Planning Board Report dated February 8, 2007. Mr. Allen then described the factual background for the petition as follows:

455 Harvard Street is a 8,324 square foot lot located at the northeast corner of Thorndike and Harvard Streets. On the site is a single-story, single-bay garage built in 1935. The property was previously used as a gas and service station, and more recently as a parking lot. The surrounding neighborhood includes a mix of residential and commercial properties, including the JFK Crossing commercial district. The immediate rear abutter is a two-family dwelling. The abutters across the street and to the side include gas stations and a parking lot.

The Petitioner proposes to construct a 15.75 ft x 20.6 ft rear addition and to renovate the existing structure to establish a 31 seat restaurant use on the property. The Petitioner also proposes to make various landscaping and parking improvements to the site to facilitate traffic circulation. A 9.6 ft x 8.6 ft walk-in cooler will be installed next to the addition on a concrete slab aligned with the building's rear wall. The addition and cooler total approximately 417 gross square feet, and include a rear access door. An existing rear projection on the building will be rebuilt flush with the building's main exterior side wall. A 9.5 ft wide trash enclosure will be constructed along the building's main exterior side wall and will match the fencing along the rear lot line. The Petitioner will have daily trash pick-up.

The Petitioner will provide access to the site only from Harvard Street by blocking off two curb cuts leading onto Thorndike Street. The Petitioner will also provide a landscaped area in front of the building, and relocate parking to the side of the lot. Traffic on the lot will enter from and exit onto Harvard Street; and it will flow in a one-way direction by circulating around the rear of the building.

On October 25, 2006, the Planning Board approved with conditions the proposed design for new signage, awning, and renovated façade. On November 15, 2006, the Planning Board approved the colors and materials for a new free-standing sign.

Mr. Allen reviewed the zoning relief necessary to reconstruct and renovate the existing former gas station, and to convert the premises into a 31 seat restaurant:

Section 4.01.3.a – Permitted Uses – Special Permit Required

Section 4.07 – Table of Use Regulations, Use# 30 – Special Permit Required*

Section 5.09.2.a – Design Review**

A special permit for design review is required for any use on a lot fronting on Harvard Street. All of the standards in paragraph (4) have been met and comments on the most relevant follow:

- a. **Preservation of Trees and Landscape.** The lot currently is nearly entirely paved except for a portion of landscaped area in the front corner, which is being maintained. The proposal would add landscaping to the center of the lot in front of the structure and along the Thorndike Street lot line.
- b. **Relation of Buildings to Environment.** The proposal retains the structure's exterior walls and fenestration, and the addition to the rear is designed to integrate well with the existing structure. Parking has been designed to be along the Thorndike Street lot line rather than in front of the building, which instead has been designed as a patio and landscaped area to create a friendly pedestrian environment.
- c. **Open Space.** The proposal creates more landscaped area than what previously existed on the site. The landscaped area attempts to incorporate the building, which has a significant front yard setback, more with the streetscape.

- d. Circulation. The site currently has three curb cuts – one large curb cut (approximately 40 feet wide) on Harvard Street, and two smaller curb cuts (approximately 36 feet and 28 feet) on Thorndike Street. The Petitioner will restrict vehicular access to the site to Harvard Street by fencing off the two Thorndike Street curb cuts, creating a one-way circular vehicular pattern around the building. This will reduce the traffic impact on Thorndike Street, a more residential street, and provide a clear parking layout on the side property line.
- e. Heritage. The proposal preserves the architectural integrity of the existing structure.

Section 5.70 – Rear Yard Requirements

Section 5.73.1 – Rear Yards in Business or Industrial Districts

Where a rear lot line in an L District abuts an S, SC, T or M District, the rear yard requirements shall be increased by 10 feet, but no rear yard need be deeper than 20 feet.

Section 8.02.2 – Alteration or Extension

A special permit is required to alter and extend a pre-existing non-conforming structure.

	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Relief</u>
Rear Yard Setback	20 ft	23 ft	15.6 ft	<u>Variance/Special Permit†</u>
Parking Spaces (1 space per 4 seats)	7.75	n/a	8 (2 compact)	<u>Complies</u>

* Under Section 4.07, a special permit is required for any permitted use fronting Harvard Street.

** Under Section 4.01.3, which is applicable to this proposal, a special permit may be issued in accordance with the requirements of Section 5.09 – Design Review.

† Under Section 5.43, The Board of Appeals may waive yard and setback requirements if the Petitioner provides a counterbalancing amenity. In this case, landscaping and preservation of the existing structure will serve as the amenities.

The Chairperson inquired if any members of the public wished to be heard. One member of the public (Town Meeting Member, Stanley Rabinowitz, Precinct 9) expressed concerns on behalf of a neighbor on Thorndike Street regarding odor and noise, all of which have been satisfactorily addressed by the Petitioner.

Adam Serafin, on behalf of the Planning Board, gave the following report:

The Planning Board is not opposed to this proposal to renovate the existing building and construct an addition to operate a restaurant on this site. The proposal has been designed so that the structure is not altered substantially, and the restaurant use should be an improvement from the previous car-oriented use. The addition and walk-in cooler have been designed to incorporate well with the existing structure. The applicant is meeting the parking requirements of the Zoning By-Law, and available parking is a chief concern of the neighborhood. By eliminating the two curb cuts on Thorndike Street, the neighborhood may have an opportunity to gain more street parking. The site plan is adequate, and the additional landscaping should be beneficial. Though much of the site would be paved for parking under this proposal, the site is in an urban area and it is currently entirely paved. This site plan seeks to add an amenity to the neighborhood by eliminating Thorndike Street access while still creating a pedestrian-oriented environment in front of the building. To limit any possible noise and odor impacts from the restaurant use, the necessary soundproofing and odor-eliminating technology should be implemented.

Therefore, the Planning Board recommends approval of the plans entitled "b.good; 455 Harvard Street, Brookline, MA" and last dated January 9, 2007, subject to conditions.

Frank Hitchcock, Senior Building Inspector, spoke on behalf of the Building Commissioner. He restated the various sections of the Zoning By-Law under which relief is needed. The Building Department has no objections to the proposed reconstruction and renovation of the former gasoline service station, and conversion of the premises into a 31 seat restaurant, and will ensure that all State Code provisions are satisfied.

The Board having deliberated on this matter, considered the foregoing testimony and concluded that it is desirable to grant all the relief requested by this Petitioner, subject to certain conditions.

The Board considered the visual relationships of site and proposed alterations to the use, scale, and architecture of the surrounding community. The Board has considered whether the proposal creates harmonious visual relationships and the Board has determined that the relationship is, in general, harmonious. The Board further finds that the proposed reconstruction

and renovation of the former gasoline service station, and conversion of the premises into a 31 seat restaurant, will not be more detrimental to the neighborhood than the existing conditions. The use as proposed to be developed and the site design are aesthetically pleasing. The proposed design is adequate and appropriate for the neighborhood. The proposed development will not have any substantial effect on the traffic, nor will it cause a nuisance or serious hazard to vehicles or pedestrians. The Board finds that the proposed use will not remove any existing low or moderate-income housing in the Town.

Accordingly, the Board makes the following findings pursuant to Sections 5.09 and 9.5:

1. The location, topography, vicinity and natural features of the site make it particularly suitable for the proposed reconstruction and renovation of the former gasoline service station, and conversion of the premises into a 31 seat restaurant.
2. The use as proposed by the Petitioner will not adversely affect the neighborhood.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The proposed use will not have a significant adverse affect on the supply of housing available for low and moderate income people.

Accordingly, the Board grants special permits pursuant to Sections 4.01.3.a, 4.07, 5.09.2.a, 5.43, and 8.02.2. The foregoing grants are all zoning relief requested to reconstruct and renovate the former gasoline service station, and convert the premises into a 31 seat restaurant per the plans, and are granted subject to the following conditions:

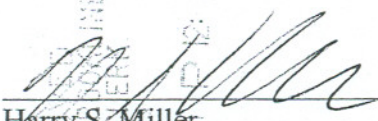
1. Prior to the issuance of a building permit, a final landscaping plan indicating planting types and locations and hardscape materials, especially for the triangular

pedestrian area in front of the building, and stamped by a registered landscape architect or architect, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.

2. Prior to the issuance of a building permit, final plans for the trash enclosure, indicating materials and dimensions, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. All parking spaces shall be appropriately striped.
4. In order to avoid vehicular conflicts on site and ensure safe circulation, directional signage shall be installed to indicate the appropriate vehicular direction. Prior to the issuance of a certificate of occupancy, plans for such signage shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
5. All fencing shall be well maintained.
6. Since the neighborhood is concerned about sound, all mechanical refrigeration equipment shall be installed to meet or exceed customary industry standards for equipment in close proximity to residential property.
7. All exhaust vents should be fitted with filters or other technology to eliminate odors, and vents shall be directed away from the residential neighborhood.
8. The concrete retaining wall along the rear lot line shall be repaired and patched.
9. Prior to the issuance of a building permit, the Petitioner shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor, including landscaping, fencing, grading, and location of utilities; 2)

final building elevations stamped and signed by a registered architect; and 3)
evidence that the Board of Appeals decision has been recorded at the Registry of
Deeds.

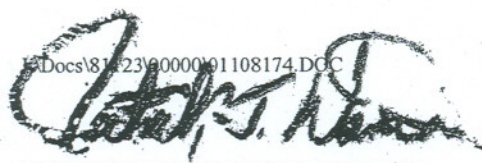
Unanimous Decision of
The Board of Appeal



Harry S. Miller

Filing Date: March 9, 2007

A True Copy:
ATTEST:



Patrick J. Ward
Board of Appeals